

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM TOMINO, Individually)
and trading as Tomino's Deli,) Civil Action
) No. 08-cv-06018
Plaintiff)
)
vs.)
)
CITY OF BETHLEHEM;)
JOHN R. LEZOCHÉ, Individually)
and as zoning Officer for the)
City of Bethlehem; and)
JOHN DOES 1-100,)
)
Defendants)

O R D E R

NOW, this 31st day of March, 2010, upon consideration of Defendants, City of Bethlehem and John R. Lezoche's Partial Motion to Dismiss Plaintiff's Complaint, which motion was filed together with a memorandum of law in support on March 5, 2009; upon consideration of Plaintiff William Tomino's Brief in Opposition to Defendants', City of Bethlehem and John Lezoche's Partial Motion to Dismiss Plaintiff's Complaint, which brief was filed March 30, 2009; and for the reasons expressed in the accompanying Opinion,

IT IS ORDERED that Defendants, City of Bethlehem and John R. Lezoche's Partial Motion to Dismiss Plaintiff's Complaint is granted in part and denied in part.

IT IS ORDERED that the motion is granted to the extent it seeks dismissal of Counts I-IV against defendant John Lezoche; dismissal of the due process claim against defendant City of

Bethlehem ("the City") set forth in Count I; and dismissal of Counts II and III against the City.

IT IS FURTHER ORDERED that Counts I-IV of plaintiff's Complaint are dismissed against defendant Lezoche, without prejudice for plaintiff to re-plead those claims in accordance with the accompanying Opinion.

IT IS FURTHER ORDERED that Count I is dismissed against defendant City of Bethlehem to the extent it alleges a due process claim under the Fourteenth Amendment of the United States Constitution, and Counts II and III are dismissed against the City of Bethlehem in their entirety, all without prejudice for plaintiff to re-plead those claims in accordance with the accompanying Opinion.

IT IS FURTHER ORDERED that plaintiff shall have until on or before April 20, 2010 to file an amended complaint in accordance with this Order.

IT IS FURTHER ORDERED that, in the event plaintiff does not file an amended complaint, defendant City of Bethlehem shall have until on or before May 3, 2010 to answer the remaining claims.

BY THE COURT:

/s/ James Knoll Gardner
James Knoll Gardner
United States District Judge